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E. R. FARR,  
Town Clerk.

Town Hall,  
Barking.

### NOTTINGHAMSHIRE

#### Appointment of Male Probation Officer

THE Nottinghamshire Combined Probation Committee invite applications for the appointment of full-time male probation officer at a salary in accordance with the Probation Rules, 1949.

Forms of application, with conditions of appointment, may be obtained from my office, and completed forms must be received by me not later than April 21, 1952.

K. TWEEDALE MEABY,  
Clerk of the Peace.

Shire Hall,  
Nottingham.

### COUNTY BOROUGH OF WIGAN

#### Appointment of Deputy Town Clerk

APPLICATIONS are invited for the appointment of Deputy Town Clerk at a salary of £1,100 per annum rising by annual increments of £50 to a maximum of £1,200 per annum.

Applicants must be admitted Solicitors with experience in a Town Clerk's Office.

Applications, accompanied by copies of three recent testimonials, should be delivered to me not later than Monday, April 21, 1952.

ALLAN ROYLE,  
Town Clerk.

Town Clerk's Office,  
Municipal Buildings, Wigan.  
April 1, 1952.

### BUCKS COUNTY COUNCIL

#### Children's Department

APPLICATIONS are invited from men holding a Social Science Diploma, or other suitable qualification, for the post of Children's Visitor to undertake duties mainly in connexion with older boys under the Children Act, 1948.

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Applications, stating age, qualifications and experience, together with copies of two recent testimonials, and the names, addresses and description of two referees, must reach the Children's Officer, 22, Silver Street, Aylesbury, by April 30, 1952.

GUY R. CROUCH,  
Clerk of the Bucks County Council.

County Hall,  
Aylesbury.  
April, 1952.

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The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and full particulars of previous experience, and giving the names and addresses of two referees, must be received by the undersigned not later than April 30, 1952.

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DANIEL JOHNS,  
Clerk to the County Council.

County Hall,  
Carmarthen.  
April 7, 1952.

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[ESTABLISHED 1897.]

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## NOTES of the WEEK

### Two Convictions Based on One Incident

So far as we are aware the case of *Hutton v. Casey*, heard in the Divisional Court on February 8, 1952, has not been reported. It is, however, of importance to justices because it upheld a decision of justices for the County of Monmouth by which they found a driver guilty of driving without due care and attention and of driving without reasonable consideration for other persons using the road, the two convictions being based on the same incident. The driver was approaching a bend and there was an omnibus on his near side. As he pulled out to overtake he saw a car coming the other way. He swerved in and hit the bus.

The Lord Chief Justice said that the justices found that the driver had room, had he kept his head, to pass the omnibus safely, but he lost his head and swerved, and so hit the bus. Lord Goddard said that finding himself in a position approaching a bend with another car coming towards him, he was driving without due care and attention in trying to pass. Then, not having shown due care and attention by trying to pass he proceeded to swerve and ran into the bus, and therefore he was not giving proper consideration to the omnibus driver.

Lord Goddard added that there was no objection in law to what the justices did in so convicting of two offences, and the appellant had shown nothing which makes it impossible in law to convict of more than one offence on the same facts. Earlier in his judgment the Lord Chief Justice said that the court had not to consider whether it is desirable, where the evidence simply consists of the same facts on both summonses, to issue two summonses, the only question was whether there was any objection in law.

It will be noticed that Lord Goddard in his judgment in effect separates the two offences, attributing each to a separate part of the course of driving complained of. To this extent the two convictions are not based on the same facts, because the inference is that the conviction for driving without due care and attention could have been supported even if there had been no collision with the bus. This latter incident was an additional piece of bad driving, which was not a necessary and inevitable consequence of the wrongful decision to overtake the omnibus at that point.

It does seem, therefore, that the facts of this case were somewhat out of the ordinary, and probably it will not often happen that two separate convictions can be justified in this way. By this early remark the Lord Chief Justice appeared to indicate that the court was not wholly in favour of the practice.

### Markets and Highways

There are plenty of people who think that in these days of traffic congestion the roads should be kept free of stalls, stationary barrows and other obstructions. There are, however, probably almost as many who would be prepared to uphold the continuance of street markets, partly because they are of benefit to those who want to buy at the lowest prices, and partly because there is often a question of maintaining ancient rights.

The *Birmingham Post* describes an interesting situation that has arisen in Newcastle-under-Lyme :

"The presence of a stall on a Zebra crossing in the open public market at Newcastle-under-Lyme has set a problem for the Town Council Highway Department and the Road Safety Committee.

"The site of the market is on a section of the main trunk road through the town, and the Road Safety Committee has recommended that the stall should be removed. But under Newcastle's ancient Statutes and Charters which date from the twelfth century, the open-air market has a right to obstruct the highway on Monday, Friday and Saturday of each week.

"According to legal opinion, the highway was dedicated to the town subject to the presence of the stalls on market days, and the problem now arises whether the Zebra crossing is interfering with the use of the stall, or whether the stall is an obstruction which can be removed without special powers.

"The problem is being reviewed by the Highways Committee for a report and recommendation to the Town Council."

In 16 *Halsbury* 235, it is stated : "In many cases a highway has been dedicated subject to 'market rights,' i.e., the right of the owner or other people to hold markets or erect fair booths thereon to the partial obstruction of the public or subject to the right of the occupiers of adjoining premises to deposit goods upon it in front of their premises," and a footnote adds that statutes giving local authorities control over streets do not in general affect pre-existing market rights.

### Pedestrian Crossings

It has soon been found necessary to make minor amendments to the Pedestrian Crossing (General) Regulations, 1951, and to the corresponding London Regulations. The amending statutory instruments are, for the General Regulations, S.I. 1952 No. 420, and for London S.I. 1952 No. 421. Both came into operation on March 12, 1952. Their main object is, broadly, to prevent the

object of the main regulations from being defeated because certain uncontrolled crossings did not comply with the strict standards laid down, although the crossings were quite obviously zebra crossings. The objection taken had little, if any, real merit. In addition, exemption has been granted to bicycles, mechanically propelled and others, from the requirement of reg. 6 in each set of regulations that a vehicle shall not stop in the vicinity of uncontrolled crossings, the approaches to which are duly marked. The exemption does not apply if a sidecar is attached to the bicycle. It is also made clear that any driver who stops in order to give precedence to a pedestrian as required by reg. 4 is not committing an offence against reg. 6.

Objections have been taken under the main regulations, so we have read in the press, that a crossing sited on a bend could not comply with the regulations, and that the stripes had to extend right to the line of studs in order to make the crossing one which complied with Part II of the schedule.

It is now provided that if most of the studs marking the line of a crossing comply with the requirements of para. 1 (3) of sch. I the fact that one or more studs do not so comply shall not affect the validity of the crossing, so long as the general indication of the line is not thereby materially affected. There is a similar saving provision as to the prescribed distances between the two lines of studs, and moreover the Minister of Transport is given power to authorize, in particular cases, crossings wider than sixteen feet, or less than eight feet wide.

The first stripe on each side of a zebra crossing may now be either black or white. Formerly it was required to be black. The stripes may now end not more than six inches from the lines formed by the edges of the studs marking the crossing instead of being required to go right to those lines. Furthermore, provided that the general appearance of the pattern of stripes is not materially impaired, the fact that one or more stripes do not comply strictly with the requirements does not affect the position.

### Coventry Magistrates' Court

Mr. A. N. Murdoch, the learned clerk to the justices for the city of Coventry, has produced an interesting report on their work for the year 1951. At the outset he calls attention to a remarkable state of affairs resulting from the age limit for justices and the expiration of periods of extension. At the end of 1951 there were only six magistrates on the active list of more than two years' standing; thirty magistrates have been appointed in the last two years. It seems they are all kept busy, as the work of the court continues to increase steadily. There are some statistics, and Mr. Murdoch, who is nothing if not original, gives particulars of the weight of paper in the court agendas, which has increased by 237 per cent. since 1946. This is a curious method of calculating the amount of court work, but it is one way of giving a rough idea to those who are not inclined to study statistical tables. Apparently the increase of work has meant that court premises have become inadequate and staff insufficient.

There are some reflections, necessarily brief, yet sufficiently provocative, on offences and their punishment. In some cases, it is said, the amount of violence to persons or property has been outrageous. At one time overflow pipes were wrenched off nearly every house in a street for the sake of the comparatively small value of the pieces of pipe as scrap lead, without any regard to the high cost of repairing the damage. "If the consequences of the criminal act are more grave than the primary intention of the criminal it may be necessary to make the punishment fit the consequences as well as the crime and the criminal." In fact, courts are accustomed to consider consequences of offences, but it is often perplexing to decide how far the punishment should be

assessed with regard to consequences, and there is here plenty of scope for discussion among justices and others concerned.

Turning to the large volume of work in connexion with periodical payments through the court, Mr. Murdoch suggests that more could be done in Coventry to secure payments under these orders if staff could be obtained to give more detailed attention to the requirements of the Married Women (Maintenance) Act, 1949. He also pleads the cause of women who are working and who still continue to have money deducted from their weekly earnings under P.A.Y.E. in respect of the amount due to them under their orders, even if they are not receiving their maintenance, with sometimes considerable delay in getting refunds and adjustments made.

In his report on the work of the probation service, Mr. Andrew Murray, the senior probation officer, states that in four years the work of probation has more than doubled. It is not only in the magistrates' courts that probation is freely used, but also at assizes and quarter sessions. Mr. Murray notes that probation is being more frequently used by H.M. judges and he quotes two instances of probation following conviction of attempted murder, one of which was that of a man aged sixty-seven.

There is the all-too-common complaint of parents who fail in their duty, with the result that their children appear in the juvenile court. "The attitude in some families appears to be that if the children are well supplied with pocket money, food and clothing, the parents feel that they have fulfilled their obligations; they do not see that going out to work and earning extra money cannot compensate for the lack of interest and companionship." The demand for labour is no doubt urgent in Coventry, as it is in so many other places, yet the duty towards home and children cannot be put on one side without the risk of disastrous results. Here is another difficult problem of these difficult times.

### London Sessions Probationers' Fund

A good deal of public money is available for helping probationers in one way or another, but it would be a mistake to think that voluntary help is now unacceptable or unnecessary. Some magistrates' courts have a poor box. As we learn from the reports we receive from time to time, many of these have slender resources, while some, like the metropolitan courts, are well provided.

We have received a copy of the Report of the London Sessions Probationers' Fund for the year 1951. The fund fulfils the functions of a poor box, and we are sorry to read in this the forty-first report, that expenditure has considerably exceeded income, which means that donations and subscriptions from sympathisers are needed. In presenting the report of the committee, and the statement of accounts, Mr. Anthony Hawke gives figures showing the extent to which probation is used at the County of London Sessions, and shows just how the fund can come to the rescue in a difficult case. He points out that full use is made of the facilities and services provided by the State before any call is made on the fund, but adds that many other needs must receive attention if probation is to succeed. An interesting item in the report deals with cases committed to the Sessions with a view to a sentence of borstal training: "Of the 186 persons committed to this court during the year 1949 for sentence under s. 20 of the Criminal Justice Act, 1948, that is, in order to ascertain their suitability for borstal, some seventy were put back for inquiry by probation officers. Forty-five were then deemed to be suitable for probation. No less than thirty-four of these have completed the two year period satisfactorily. This is particularly good, as they are usually young persons who have been convicted on one or more occasions and had the advantage of previous probation or approved school training."

## Probation in West Ham

Before the passing of the Criminal Justice Act, 1948, there was much discussion of the question whether probation ought or ought not to involve conviction. Parliament decided that it should and now that the Act has been in force for some time it is instructive to see how the change is regarded in the light of the experience of those who are concerned in the work of the courts.

In the report of the West Ham Magistrates' Court for the year 1951, Mr. G. V. Adams, the learned clerk to the justices, states :

"One of the most notable features of the year has been the successful application of the probation and discharge provisions of the Criminal Justice Act, 1948. There were many who regretted the disappearance of the Probation of Offenders Act, 1907. But it must be said that the new probation system is working well. The fact that in each case the making of a probation order must be preceded by a conviction has served to bring home to the offender the seriousness of his offence and the need for making a real effort to avoid a repetition of it."

The senior probation officer, Mr. A. H. Lambert, records an increased use of probation, which is evidently employed freely at quarter sessions as well as in the magistrates' court. The power to allow a person to become surety for the good behaviour of a probationer, conferred by s. 11 (1) of the Act is evidently found valuable. Mr. Lambert writes : "In a great many cases placed on probation at West Ham Quarter Sessions, the learned Recorder has in addition to placing a youth on probation, also bound over the father to stand surety for his lad's good behaviour in a substantial amount of money. These decisions undoubtedly have had a salutary effect."

The work of the probation officers in connexion with supervision of juveniles in need of care or protection or beyond control shows a welcome decrease. Warm tribute is paid to the work of women police in protecting these young people "Who, but for this service might have become more serious delinquents."

## Monstrum Horrendum Ingens

At 112 J.P.N. 225 we called attention to the Bill for the Companies Act, 1948. Our statement that it was the most voluminous upon the statute book was challenged by a learned reader, who claimed that distinction for the Merchant Shipping Act, 1894. We were, however, thinking of the number of pages, not the number of sections, for what matters to the victims of Parliament's industry is the amount of reading matter. By this test, the Income Tax Act, 1952, has all rivals beaten, with its 511 pages in the King's printer's first edition, and twenty-four for the table of contents, as against 363 and nineteen of the Companies Act, 1948. It costs 13s. net, as against the 6s. of the Act of 1948, which included a paper cover. On size alone it is a monster, and the epithets we have applied may surely be considered apt : it would be unfair to use the poet's third adjective, for the Act is not *informe*. By comparison with any previous consolidation of the law of income tax its shape is skilful and comprehensible.

The central principle of income tax is simple. Complication results from two main causes : the temptation for the individual taxpayer to avoid or evade the tax which means the establishment of elaborate precautions, and the reluctance of Parliament to press the simple principle against many special types of taxpayer. In no field is it more true that hard cases make bad law, or at least involved law, but of the new Act it can be said that it is "artificial, proper, and awful" in the sense in which those epithets were written about Wren's design for St. Paul's

Cathedral. It is comforting to know that, already, Messrs. Butterworth have issued, for use with *Simon's Income Tax* (or, of course, with whatever other standard work the practitioner prefers), a handbook giving full cross-references between the new Act and the old Acts. We shall review this as soon as we have had time to examine it.

## City of Manchester Finances

An important ingredient of effective local government is adequate information about its financial aspects. Interest is stimulated, decisions are more securely based, and administrative coherence induced if the treasurer of a local authority is able to bring an interpretative faculty to bear upon raw material in his accounts. In his memorandum which prefaces the city's abstract of accounts for the financial year 1950-51, in the accounts themselves, and in the financial abstract for the twelve years ending March 31, 1951, the then treasurer (Sir James Lythgoe, C.B.E., M.A.) has respectively contrived to make the financial structure plain, complete an annual edifice with the countless transactional details, and provide a kaleidoscope of the changing scene during a period embracing war and re-construction.

In the memorandum, a résumé of the accounts for 1950-51 shows that net expenditure in the general rate fund and education departments increased from £6,263,550 in 1949-50 to £6,426,399 in 1950-51, the latter figure being equivalent to a rate of 20s. 8d. in the £, and that after deducting several contributions in aid of rates, mainly the equivalent of nearly 10d. in the £ in respect of electricity and transport undertakings "de-rated" by the Local Government Act, 1948, the amount falling to be borne by rate was equal to 19s. 9d. A broad subjective analysis of gross expenditure of £14,583,867 in 1950-51 shows that fifty-one per cent. was incurred on salaries and wages, eleven per cent. on standing charges (rents, insurance, pensions, etc.), eleven per cent. on loan charges, and twenty-eight per cent. for other purposes ; income of £8,441,084 including Government grants (largely towards education) amounting to £3,921,487, equal to twenty-seven per cent. of gross expenditure.

Housing revenue account expenditure, in respect of more than 40,000 permanent and temporary houses, totalled £1,495,746 in 1950-51, including £988,835 for loan charges ; income from rents amounted to £852,540, the contribution from general rate fund to £169,582, and national Exchequer subsidies to £382,010, leaving a deficiency for 1950-51 of £91,614 (little different from 1949-50) reducing the accumulated surplus on revenue account to the relatively small sum of £54,336. Housing repairs account in 1950-51 showed expenditure of £274,027, compared with income of £298,014, which was a more favourable experience than in 1949-50, when expenditure of £335,077 overtopped income of £284,999.

The financial abstract, 1939-1951, surveys in a condensed form suitable for speedy reference and visual comparison the whole field of the municipality's finances. Legislative changes operative in 1948, including the transfer of hospitals to regional hospital boards, transfer to the National Assistance Board of responsibility for outdoor relief to necessitous persons, and financial changes under or connected with the Local Government Act, 1948, can be seen in the abstract to have reduced total net expenditure. Since then, however, continuance of the rising trend of expenditure on other corporation services was such that by 1950-51 rate borne expenditure had nearly reverted to the level of 1947-48, the year preceding the changes. Reviewing the period of twelve years to 1950-51, a diagram based on indices starting from equations to 100 in 1938-39 shows, among other features, that in 1950-51 expenditure from rates had risen to 130,

from rates and grants to 143, wages cost per employee in rate fund services to 179, and the price level for consumer goods and services to 191. This and other diagrams analysing capital outlay,

departmental loan debt and rateable value conclude a financial abstract setting the present against the past in a manner bound to yield benefits in the future.

## PROBATION SALARIES, ETC.

We spoke at 115 J.P.N. 585 (see also p. 739), of the Home Secretary's power to fix the salary of probation officers; in particular, we indicated doubt whether the relevant provisions of the Criminal Justice Act, 1948, contemplated leaving a discretion to the probation committee, even within limits fixed by the Home Secretary. It was no part of our object in that article to create difficulty in working the Probation Rules, 1949, as amended by the Probation Rules, 1950, and the Probation Rules, 1951, but in those Rules there were paragraphs of which, if our opinion was well founded, the *vires* could be questioned. It is therefore with satisfaction that we find the Probation Rules, 1952 (S.I. 1952 No. 389 L.2) revoking discretionary portions of the earlier Rules, and substituting definite provisions. It is no more than fair to the late Home Secretary and his advisers, to say that the salaries of probation officers have been under three-cornered discussion for some time, between representatives of the Government (the Treasury having a strong interest, both as partial paymaster and in its perennial fear of precedent), of the local authorities who find the remainder of the money for salaries, and of the officers themselves, meeting in the Joint Negotiating Committee for the Probation Service in England and Wales. While these protracted negotiations were going on, the Home Secretary of the day may have felt it difficult to fix exact salaries for each grade of probation officer; this may have accounted for the discretionary provisions now revoked.

Whether this conjecture be right or wrong, the negotiations have now come to a conclusion as regards principal probation officers, deputy or assistant principals, and senior probation officers, and the new Rules, made on February 28 with effect from March 1, 1952, accordingly settle fixed scales for the salaries of the grades of principal, deputy, and assistant principal, and the allowances to senior officers. Rule 4 of the new Rules substitutes a fresh r. 61 for the version of that Rule already written into the Rules of 1949 by the Rules of 1950. Paragraph (1) of the present version states the allowance payable to a senior probation officer. In an area where there is no principal probation officer the allowance depends upon the population, and para. (11) provides that for this purpose the population is to be construed in the manner provided by s. 296 of the Local Government Act, 1933, that is, by reference to the last published census. The new salary scales for principal probation officers are shown in the tables in para. (2) of the present version of r. 61, and for deputy and assistant principal probation officers in the tables in para. (3). These scales replace those set out in sch. 3 to the Probation Rules, 1950. The salary group appropriate to each probation area is shown in para. (4). Paragraphs (5), (6), and (7) provide for entry to the appropriate scale at a point above the minimum where a principal or deputy or assistant principal probation officer comes to the post from another supervisory post with the same, a higher, or an overlapping scale. Paragraph (8) of the present version of r. 61 re-states the existing provision for the payment of the metropolitan addition of £30 to principal and deputy and assistant principal probation officers, where appropriate. Paragraph (9) defines the interruptions in service of principal, and deputy and assistant principal probation officers which are reckonable for salary purposes, and para. (10) provides that service before March 1, 1952, in a post occupied on that date, is reckonable for

the purpose of determining an officer's point of entry to the appropriate salary scale. Where an officer received special increments on entry to his present post, each increment will count as one year's service for this purpose.

The scales are complicated, depending primarily upon "groupings," which—we believe—have been agreed on the Joint Negotiating Committee.

Rule 5 of the new Rules substitutes a fresh r. 67 for the old, the effect, shortly stated, being to enable a probation officer who travels in the course of duty to recover the cost actually and necessarily incurred, instead of, as under the Rules of 1949, the amount which would have been payable for the same journey to a civil servant with the same salary maximum as the probation officer. The probation committee is, however, first to consult the appropriate local authority. The new Rules deal also with the investigation of complaints or alleged offences against discipline by probation officers, the provision made being, so we understand, agreed by the Joint Negotiating Committee. Rule 2, substituting a new para. (3) for para. 3 of r. 27 of the Rules of 1949, requires the probation committee, whenever it investigates a complaint, to inform the officer in writing, and give him an opportunity of reply orally or in writing or both, after which he is to have reasonable notice of the meeting at which the complaint and his reply will be examined. He may attend the meeting, and, whether he has or has not already put in a written reply, he may make representations in person, and by counsel or solicitor or by an officer of any association of which he is a member. These provisions are, however, excluded when the complaint follows the probation officer's conviction of an offence involving fraud, dishonesty, or immorality. An ingenious piece of drafting in para. (6) of the new Rule, coupled with approval in the covering circular of delegation to a sub-committee in accordance with para. 3 (4) of sch. 5 to the Act of 1948, secures delegation of the probation committee's functions in these discipline cases to a sub-committee of not less than three and not more than five members with (in effect) appeal to the full probation committee where the sub-committee decides upon dismissal or reduction in rank. The same provisions, except that for delegation, apply where a case committee investigates such a complaint.

If our information is correct, discussions are already proceeding upon new salaries for the rank and file of probation officers, and it is to be expected, therefore, that yet more amending Rules will come along before many months have passed. This being so, it would probably be premature to urge that the Rules should be re-issued in consolidated form. The present Rules, however, are the fourth series of Probation Rules made since the Criminal Justice Act, 1948, each subsequent series putting new provisions into, and taking some provisions out of, that of 1949. The effect, therefore, is of an awkward patchwork. We recognize that this is almost unavoidable, while a new Act is being put into effect, but as soon as the Rules have settled down we hope the Home Secretary will issue a consolidated series, or (perhaps better still) two series, the one comprising the Rules for probation committees, their procedure, and the duties and functions of the officers; the other the Rules governing the position as employed persons of their officers.

## THE VALUE OF REFORMATIVE TRAINING

By W. CLIFFORD

The idea that persons who are clearly developing criminal habits are in need of training is conspicuous in the criminal code. The borstal system is intended for the training of young offenders between the ages of sixteen and twenty-one. Corrective training follows logically for those of twenty-one and over. Since there is no upper age limit to corrective training, this expedient may be applied whenever it appears that it might be beneficial, always providing that the offender has reached his majority and has the previous record defined in s. 21 of the Criminal Justice Act, 1948.

Negatively, such training is aimed at eradicating criminal tendencies whilst positively it may be regarded as training in citizenship. For both borstal and corrective training, offenders are carefully classified and allocated to the institutions best suited to the needs of the individual. There are closed and open prisons and borstals, besides a number of intermediate institutions where the prisoner begins his sentence in closed conditions and can earn the benefits of open establishments by his good conduct and response.

Although the facilities vary according to the type of institution, the pattern of training emerges clearly. Workshops of different kinds are provided and there are courses of instruction in many trades. Where likely to be of use, educational classes are arranged and cultural pursuits encouraged. Attempts are made to eradicate illiteracy and to a limited extent social amenities may be provided. Various chaplaincies cater for the spiritual needs of the prisoners.

The criticism that far too much is done to make the offender comfortable can have little point when reformation is the aim. For those beyond the reach of such practical systems of reformative treatment there is always ordinary imprisonment and even preventive detention. When however we seek to place a person back in society better able to cope with his problems than he was when he left it, there is a need for constructive thinking about the issues that arise with his detention.

The provision of open camps has aroused a good deal of unfavourable comment, but in taking this step the Prison Commissioners have helped to cope with a number of difficulties that attend institutional life. If those released from prisons and borstals are to be fitted to act as good citizens they will need training in the acceptance of their responsibilities. It is fairly obvious that we cannot encourage people to assume their responsibilities if we take all responsibility away from them. Yet this is exactly what we do by detaining them in an institution where their lives are ordered in a way which calls for no effort on their part. They may behave well within a regime which does not call upon them to think for themselves—where work is provided and meals come at regular intervals. Life is not quite so simple outside, however, and, to be realistic, we need to train them to fit into society by making their own contribution. This is the *raison d'être* of the open camps which have gone rather beyond the experimental stage. This is the essential purpose by which they should be judged. Failures there are bound to be and the classification system has not yet achieved the level of perfection that eradicates all unworthy prisoners from open prisons and borstals. It is this occasional defect in selection that brings discredit, for there are always those who will take advantage of provisions which benefit the majority. On the other hand, we must recognize that a chance is taken with

every prisoner allocated to open establishments, but it is a chance which is unavoidable if we hope to encourage trustworthy behaviour.

The real test comes when the offender is released to pick up the threads of the life he left years before. The licensing system, with the precautions of skilled after-care, serves a valuable purpose. Instead of smoothing the way completely the released prisoner is led into full responsibility. He is not left entirely to his own devices and for some time there is someone to whom he can turn for advice and help in his difficulties. At present the greater part of this after-care work is done by probation officers—often by those officers who knew the offender before his committal. It is recognized that this system of after-care is not yet all that it might be and to reduce the break from institutional to outside life we may look forward to the time when these after-care officers will be able to take up the work, not when the person is released, but when he is committed, acting throughout his sentence as a link with his family and a trusted adviser to whom he will turn naturally on discharge.

The vocational training which a prisoner receives whilst serving his sentence was originally intended to give him a trade on his release, but in practice it has not worked out quite so well. A much closer co-operation with the trade unions should be developed, if possible, if he is to get the full benefit of this re-education. Furthermore, it is noticeable that many of the trainees do not follow the trades in which they have received instruction when they are released. To some extent this is understandable since this particular kind of work is bound to be associated in the person's mind with a period of his life that he will be anxious to forget. This does not mean however that the vocational training is valueless. What is aimed at today is less the development of trade qualifications than the development of habits of regular work and the encouragement of particular skills. These are useful whatever work he follows when he leaves the institution. It involves the realization by the offender of his own potentialities and the inculcation of worthwhile habits.

In assessing the value of reformative training, it is necessary to recognize some of the limitations. By the time offenders reach the borstal stage they have all too frequently gone through the process of compulsory education and emerged still unable to read or write. The high proportion of trainees of low intelligence makes training a formidable task. In a few short years these prisons and borstals have to do what a decade in society has failed to do. It is against this background that the success of our reformative system needs to be measured. We must recognize too that by the time the offender reaches borstal, and more so when he is sent for corrective training, he may have had several doses of reformative treatment, all of which have failed. Frequently, the prisoner of low mentality has become accustomed to institutional life in a way that makes him all the more unsuitable for life outside. Paradoxically, those who have derived the least benefit from their experience of life and are unable to deal with their own difficulties or accept their responsibilities, are often the ones most sophisticated in other ways. They know all the answers to interviewer's questions and all the best ways of getting the most out of life in a separated community.

No one is really satisfied and perhaps the Prison Commissioners least of all, that reformative training is satisfactory in all respects. The buildings available leave a great deal to be

desired and some of the arrangements are necessarily makeshift because of the particular circumstances. The authorities have shown a large measure of ingenuity in adapting unsuitable buildings to their present purposes. If conditions were such that the penal system could be entirely replanned many of the present institutions would be replaced. In the selection of offenders for training, and in their classification for the different kinds of prisons and borstals there is very much more to learn. After-care will need to become much more a continuation of the institutional training with the individual assuming gradually that responsible independence that makes for good citizenship. Throughout all this treatment the aim should be to change not only habits but also the standards of valuation that have brought the offender into conflict with society. Ultimately

this must depend on the personalities of the governors, house-masters, prison officers, and the probation officers responsible for the after-care.

Reformative training will always have its considerable proportion of failures. The ages of those received, their mentality, home environment, and past experience make this inevitable. For these, imprisonment and preventive detention remain. For the others reformative training offers a chance to redeem themselves and start again. For society itself reformative training represents a hopeful and constructive attempt to reclaim those who would otherwise become more set in their criminal habits and eventually cost the community a good deal more than the training now provided.

## THE RENT CONTROL ACTS, 1946 AND 1949 — AND THAT "NEW PATH TO JUSTICE"

By L. G. H. HORTON-SMITH, Barrister-at-Law

In my article so entitled, which appeared at 115 J.P.N. 341, I laid stress on the judicial calls from the Lord Chief Justice, as President of the Divisional Court, for the creation of an appellate court from the decisions of rent control tribunals. I referred in particular to two, namely :

*R. v. Brighton and Area Rent Tribunal : ex parte Marine Parade Estates (1936), Ltd.* [1950] 1 All E.R. 946 ; 114 J.P. 292 ; and *R. v. City of London, etc., Rent Tribunal : ex parte Honig*, [1951] 1 All E.R. 175.

Up to the present there has been no sign of implementation of that call by legislation. We need not, however, give up hope ; for, as I will later show, there has now come a like call from the Court of Appeal.

### AS THINGS AT PRESENT STAND

As things stand at present, these rent control tribunals are "the absolute masters of the situation" and beyond appeal. So said Lord Goddard in the first case to come before the High Court under the 1946 Act, namely, *R. v. The Tribunal for Paddington and St. Marylebone : ex parte Kendal Hotels, Ltd.*, [1947] 1 All E.R. 448.

If a tenant refers his contract of tenancy to his local rent tribunal for a reduction of rent and in the opinion of the landlord the case is one outside the jurisdiction of the tribunal on the ground, for instance, that it is neither a furnished nor a serviced tenancy, or that the amount of furniture and/or services provided falls within the *de minimis* rule, the landlord can apply to the Divisional Court for a writ of prohibition, and, if the court accepts that view, such writ will issue and that will bring the matter to an end.

But suppose the tribunal has entertained the case and given its decision, a decision with which the landlord is dissatisfied : What then ? The landlord's only course is to apply to the Divisional Court for an order of *certiorari* to bring up that decision to be quashed.

These tribunals, however, give their decisions *simpliciter*, without assigning their reasons for the same ; and, that being so, an order of *certiorari* can only be issued if the tribunal's decision was on a matter outside the jurisdiction given to them by the Acts or was a decision which was bad on the face of it.

Short of an appellate court, the question next arises whether any way could be found of securing justice as between landlords and tenants at the hands of these rent tribunals.

### "SPEAKING DECISIONS"

There is, but only one way : namely, by rent tribunals giving their decisions in the form of "Speaking Decisions." That was and is "The New Path to Justice" with which my earlier article dealt.

The light came in through the invaluable and illuminating article from the pen of Lord Meston, of the Bar, entitled "Order of Certiorari," published at 115 J.P.N. 86.

That article took as its natural basis the significant case of *R. v. Northumberland Compensation Tribunal : ex parte Shaw*, [1951] 1 All E.R. 268. It was not a decision under either of these two Acts of 1946 and 1949. But that does not signify. It deals with *certiorari* and its full capabilities.

As already shown in Lord Meston's article and in my own, the Divisional Court was faced with a difficulty. For it was faced with conflicting decisions of the past. One was a decision of the Court of Appeal by which, normally, they would have found themselves bound. That was in the case of *Racecourse Betting Control Board v. Secretary for Air* (Lord Greene, M.R., presiding) [1944] 1 All E.R. 60. But that decision conflicted with that of the House of Lords (Earl Cairns, L.C., presiding) in *Overseers of the Poor of Walsall v. N.W. Ry. Co.* (1878) 43 J.P. 108, and further with the decision of the Privy Council in *R. v. Nat Bell Liqueurs, Ltd.* [1922] 2 A.C. 128. Curiously enough, neither of these two decisions, of 1878 and 1922 respectively, was in 1944 brought to the notice of the Court of Appeal.

The meaning of "Speaking Decisions" was made abundantly clear at the hands of Earl Cairns, L.C., in the 1878 case and by Lord Sumner in the 1922 case, and in my article I set forth what, respectively, they said.

Faced with these decisions of the House of Lords and of the Privy Council, the Divisional Court in the 1950 case here under notice held it to be (as clearly it was) their duty to follow these two and to disregard that of the Court of Appeal of 1944 ; and, consequently, inasmuch as the tribunal in question had told the court their view of the law and as that view was wrong the court had power to quash the tribunal's decision. The court therefore issued an order of *certiorari* for the purpose.

### THEIR APPLICABILITY TO RENT CONTROL TRIBUNALS

As Lord Meston observed, the Lord Chief Justice emphasized in this case the fact that many tribunals had been set up under various statutes, and that, though they all desired to do their

duty, it must be for their benefit that the Divisional Court should be able to give guidance to them, which it could, if they set out the reasons for their decisions in the form of "speaking orders."

In addition, then, Lord Meston cited a decision of the Court of Appeal of 1924 in *R. v. Electricity Commissioners : ex parte London Electric Joint Committee (1920), Ltd. and Others* (1924) 88 J.P. 13. "Since that case was decided in 1924, many tribunals," he wrote, "have been established, and probably those which affect most the life of the people are the rent tribunals from whom no appeal lies in the ordinary sense. Invite such a tribunal to make a 'Speaking Order,' and there may" then "be some hope in future for those parties who are dissatisfied with the tribunal's decision and who, in the past, were"—as still alias! they today at present remain—"unable to carry their case any further."

#### AND HOW

As the judicial calls from the Divisional Court for the creation of an appellate court have at present proved of no avail, how can we secure "speaking orders," which, if wrongly founded, can be quashed by *certiorari*? This can be secured either by means of amendment of the existing regulations under the 1946 and 1949 Acts, by the inclusion of a fresh regulation directing rent tribunals, on the request of either party before them, to issue their decisions in the form of "speaking decisions," as above explained, or, if the present Government does not feel justified in adopting that suggestion, we shall have to fall back on a call to the honour of the rent tribunals: a call which should prove irresistible. As elsewhere I have written, "The desire for justice has ever characterized our race. Let it not fail us now." Let a request by either party for a "speaking decision" suffice to ensure compliance.

#### THE "SHAW CASE," 1950; NOW AFFIRMED

With the close of 1951 *R. v. Northumberland Compensation Appeal Tribunal : ex parte Shaw* [1951] 1 All E.R. 268, had gone to the Court of Appeal and was there most exhaustively considered from December 4 to 7, 1951, by Singleton, Denning, and Morris, L.J.J., and reserved judgment was given by them on December 19, 1951, affirming the decision of the Divisional Court: see [1952] 1 All E.R. 123, no fewer than thirty-eight earlier cases coming in for citation and consideration.

The main part of the head-note is as follows: "Under reg. 10 of the National Health Service (Transfer of Officers and Compensation) Regulations, 1948, the applicant claimed compensation for loss of employment attributable to the passing of the National Health Service Act, 1946. Being dissatisfied with the amount which the compensating authority awarded him, he appealed to the appeal tribunal under reg. 12. The tribunal upheld the decision of the compensating authority. On the application by the applicant for an order of *certiorari* to remove the order of the tribunal to the High Court to be quashed, it was admitted that an error of law appeared on the face of the tribunal" (*sic*: presumably a misprint for: "error on the face of the record").

The Court of Appeal thus applied the above-mentioned decisions of the House of Lords in the *Walsall Overseers* case of 1878, and of the Privy Council in the *Nat Bell Liqueurs* case, 1922—neither of which (as already stated) had been called to the notice of the Court of Appeal when giving their decision in the above-mentioned *Racecourse Betting Control* case of 1944 which conflicted with those decisions of the House of Lords and of the Privy Council in 1878 and 1922 respectively.

With regard to that decision of 1944, Singleton, L.J., said it was not applicable; Denning, L.J., distinguished it on the grounds which he gave at p. 130; and Morris, L.J., doubted it.

The head-note concludes with very important observations on the part of Denning, L.J., which will be found in detail at pp. 129 and 131 and should be read with the closest attention, but the judgment to which for the moment I would particularly wish first to refer is that of Singleton, L.J., pp. 124-127, which, at p. 127, closes significantly as follows:

#### CALL BY SINGLETON, L.J., FOR AN APPELLATE COURT

"The appeal" of the tribunal "fails," he said. "If it had succeeded, the applicant would have been deprived of some part of the compensation for loss of office to which he is entitled under the regulations, and to which every one now agrees that he is entitled.

"There was no way other than this by which the mistake could be rectified. The Attorney-General pointed out the undesirability of the court interfering with the decisions of tribunals set up by Parliament. I agree with him that the Divisional Court cannot extend its powers. It can only act according to the well-recognized rules. It is equally important that the court should not hesitate to act to prevent an injustice being done if the remedy sought is within the scope of its powers.

"Much time has been expended in recent years in considering whether in particular circumstances *certiorari*, or prohibition, will lie. A great deal of it could be saved. The regulations under the National Health Service Act, 1946, are of great complexity. The interpretation of them is left to the tribunal: there is no provision for an appeal to the courts. That position arises frequently nowadays.

"I most earnestly wish that in such cases, where difficult questions of law and of interpretation must arise, that there will be given some right of appeal. Perhaps the most convenient form is that adopted by s. 37 of the National Insurance (Industrial Injuries) Act, 1946, under which any question of law arising in connexion with the determination of certain questions may, if the Minister thinks fit, be referred to the decision of the High Court, and any person aggrieved by the decision of the Minister on any question of law not so referred may appeal from that decision to the High Court. And there is provision in subs. (5) that the decision of the High Court shall be final, a provision which may be thought desirable in such cases.

"After all, it is the function of the courts to determine questions of law. Tribunals are sometimes given an unduly difficult task. There must be a feeling of dissatisfaction, if it is recognized that a decision of a tribunal is wrong in law and yet there is no power to correct it—in other words, if there is no right to obtain the opinion of the court.

"I am satisfied that the course I have suggested would result in a saving of time, and of expense, and would be for the public good."

#### "CERTIORARI": DENNING, L.J., ON ITS LONG HISTORY AND ONLY TEMPORARY DISUSE

This was followed by the judgment of Denning, L.J., at pp. 127-132, a judgment which must be regarded as historic in both senses: a most masterly marshalling of all the relevant leading authorities, together with a superb history of *certiorari* throughout the "many centuries" (p. 128): starting with the interesting phraseology of the writ of *certiorari* itself, originally in Latin and afterwards in English.

"Of recent years," he said at p. 128, "the scope of *certiorari* seems to have been somewhat forgotten. It has been supposed to be confined to the correction of excess of jurisdiction, and not to extend to the correction of errors of law... But the Lord Chief Justice has, in the present case, restored *certiorari* to its

rightful position and shown that it can be used to correct errors of law which appear on the face of the record, even though they do not go to jurisdiction. I have looked into the history of the matter and find that the old cases fully support all that the Lord Chief Justice says. Until about a hundred years ago"—i.e., about 1852—"certiorari was regularly used to correct errors of law on the face of the record. It is only within the last century that it has fallen into disuse, and that is only because there has, until recently, been little occasion for its exercise. Now, with the advent of many new tribunals and the plain need for supervision over them, recourse must once again be had to this well-tried means of control. I will endeavour to show how the writ of *certiorari* was used in former times, so that we can take advantage of the experience of the past to help us in the problems of the present."

He will be found to deal first with cases before magistrates (pp. 128-129), (a) in their criminal jurisdiction (pp. 128-129) and (b) in their civil jurisdiction (p. 129), and then secondly with orders of statutory tribunals (pp. 129-130), and then thirdly with the position as to arbitrators (p. 130), and then shows the resultant legal position.

#### IN MAGISTERIAL CASES

(a) Criminal. (b) Civil

Starting thus with *convictions by magistrates in summary proceedings under Acts of Parliament*, he tells us "that ever since the days of Lord Holt, C.J., the Court of King's Bench has been extremely strict to see that all was in order," as there (at pp. 128-129) explained, and then added that "the result of all this strictness, however, was that many convictions were quashed for defects of form and not of substance" with the result that "Parliament intervened in 1848 to make the record of a conviction much more simple. Instead of a detailed speaking record, there was provided an unspeaking common form which rarely disclosed any error. Thenceforward there was not so much room for *certiorari* in the case of convictions, but"—as shown by Lord Sumner, in *R. v. Nat Bell Liqueurs, Ltd.*, of 1922, above, in the Privy Council—"the fundamental principles remained untouched" (p. 129).

Next—at pp. 129-130—for its use in civil matters before justices.

As to these, he said, "The Court of King's Bench was never so strict as it was about convictions. It did not require a detailed speaking record to be sent to them. The record had to contain everything necessary to show that the justices had jurisdiction to deal with the matter, and it had to set out their adjudication, but it was not necessary to set out either the evidence or the reasons.

*Note, however, that—as here he pointed out (at p. 129)—"If a point of law arose, on which either party desired the ruling of the King's Bench, he could ask the justices to make a speaking order, that is, to make a special entry on the record of the reasons for their judgment" and—though "the justices were not bound to do this"—"they usually do so if they entertained a doubt about the point. Where their reasons thus appeared on the record, the Court of King's Bench would on certiorari inquire into their correctness, and, if the reasons were wrong, would quash the decision."*

Note, further, that—alternatively—"sometimes the justices would find the facts and state them expressly as part of the record so as to enable the Court of King's Bench to say whether their judgment on those facts was in law right or wrong. It was then known as a 'case stated' and the King's Bench would again on *certiorari* determine whether the decision was correct or not." After then citing cases illustrating "the principles on which the court acted," he continued: "The procedure

in these cases, however, was simplified in 1857 when the legislature intervened to enable justices to state a case for the opinion of the court without the record being removed by a writ of *certiorari*: see the Summary Jurisdiction Act, 1857, s. 10." Hence, as he stated: "Thenceforward there was not so much room for *certiorari* in the case of orders of justices, but"—again—"the fundamental principles remained untouched."

This closed his consideration of convictions or orders of justices which, he said, "were by far the most numerous cases in which *certiorari* was used" (p. 129).

#### IN CASES BEFORE STATUTORY TRIBUNALS

And so, at p. 129, coming to statutory tribunals and their orders, he said: "The Court of King's Bench has from very early times exercised control over the orders of statutory tribunals, just as it has done over the orders of justices," the earliest instances that he had found being the orders of the commissioners of sewers, who were set up by statute in 1531 to see to the repairs of sea-walls and so forth. "The Court of King's Bench used on *certiorari* to quash the orders of the commissioners for errors on the face of them, such as when they failed to set out the facts necessary to show that they had jurisdiction in the matter, or when they committed some error in point of law."

"The control thus exercised over the commissioners of sewers was," he said at p. 130, "used by Lord Holt, C.J., as a precedent to control by *certiorari* the orders of any tribunal set up by Parliament, such as the College of Physicians—*Grenville v. College of Physicians* (1700) 12 Mod. Rep. 386—and the Commissioners for the repair of Cardiff Bridge—*Cardiff Bridge* case (1700) 1 Salkeld 146"—and "since that time it had never been doubted that *certiorari* will lie to any statutory tribunal."

To the suggestion made on behalf of the tribunal here in question that, "in the case of these statutory tribunals, the Court of King's Bench only interfered by *certiorari* to keep them within their jurisdiction, and not to correct their errors of law," he replied, at the same p. 130, that "there are many cases in the books where *certiorari* was used to correct errors of law on the face of the record," and he closed this part of his judgment with a reference to a diversity in instances.

#### POSITION AS TO ARBITRATIONS

Turning thence, at p. 130, to the awards of arbitrators, he pointed out that "the Court of King's Bench never interfered by *certiorari* with the award of an arbitrator because it was a private tribunal and not subject to the prerogative writs." He shows the only way in which an aggrieved party in earlier years could act for the purpose of remedy, but was careful to point out that, though "at one time an award could not be upset on the ground of error of law by the arbitrator, because that could not be said to be misconduct or undue means," it was ultimately held in *Kent v. Ebstol* (1802) 3 East. 18, that even "an award could be set aside for error on the face of it." "This remedy"—a remedy "by motion to set aside"—"however is confined to arbitrators" and "does not extend to statutory tribunals."

#### "ONE GOVERNING RULE" THROUGHOUT AS TO CERTIORARI

In the result, he says at p. 130 that "throughout all the cases there is one governing rule," namely, "that *certiorari* is only available to quash a decision for error of law if the error appears on the face of the record," and he then asks and answers the question: "What then is the record?"—i.e., what must it contain? *Inter alia*, he says at p. 131, following the cases which he cited at this point: "The record had also to set out the

adjudication, but it was never necessary to set out the reasons : See *South Cadbury (Inhabitants) v. Braddon, Somerset (Inhabitants)* (1710) 2 Salkeld, 607, nor the evidence, save in the case of convictions. Following these cases, I think the record must contain at least the document which initiates the proceedings, if any, and the adjudication, but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them." But—for the purposes of the present article—mark his immediate addition, namely : " If the tribunal does state its reasons, and those reasons are wrong in law, *certiorari* lies to quash the decision."

#### WHERE REASONS APPEAR IN OR AS PART OF THE RECORD

Later—at the same p. 131—he shows that " notwithstanding the strictness of the rule that the error of law must appear on the face of the record, the parties could always by agreement overcome this difficulty." Thus, " if they both desired a ruling of the Court of the King's Bench on a point of law which had been decided by the tribunal but which had not been entered on the record, the parties could agree that the question should be argued and determined as if it were expressed in the order. This course was only taken if no one objected. It seems," he said—and here again, note this for the purposes of the present article—" to have been adopted by litigants as a convenient alternative to asking the tribunal to make a speaking order." After citing various cases, commencing with one of 1843, he cited others (of 1910 and 1943) to " show that the practice continues today," and added : " The explanation of all these cases is, I think, that the affidavits " used for the purpose " are treated by consent as if they were part of the record and make it a speaking order. Apart from these consent cases, it is often a very nice question whether an error which does not appear on the record is one which goes to jurisdiction or is only an error of law within the jurisdiction. If it goes to jurisdiction, affidavits are admissible, but otherwise not."

He did not in the case presently before the Court need to, " nor did " he " venture on a discussion of the cases where Parliament had intervened to restrict the use of *certiorari* except to say that " even " those restrictions can often be overcome by consent : see *R. v. Dickenson* (1857) 7 E. & B. 831." But, as he added, " no such restriction appears in this "—the present " case."

#### THE "SHAW CASE," IN EFFECT, A "SPEAKING DECISION" AND QUASHED ON "CERTIORARI"

Coming to a conclusion, he said—at p. 131 *ad fin.*—What " we have here " is " a simple case of error of law by a tribunal, an error which they frankly acknowledge," and " it is an error which deprives the applicant of the compensation to which he is by law entitled . . . It would be quite intolerable if in such a case there were no means of correcting the error. The authorities to which I have referred amply show that the King's Bench can correct it by *certiorari*. It is true," he continued at p. 132, " that the record which has been sent up to the court does not distinctly disclose the error, but that is only because the

record itself is incomplete. The tribunal has sent up its decision, but it has not sent up the claim lodged with the compensation authority or the order made by them on it or the notice of appeal to the tribunal. These documents would, I think, properly be part of the record," and " they would, I understand, have disclosed the error. If it had been necessary, the court could have ordered the record to be completed. But that is unnecessary, having regard to the fact that it was admitted in open court by all concerned that the decision was erroneous," and " I am clearly of opinion that an error admitted openly in the face of the court can be corrected by *certiorari* as well as an error that appears on the face of the record."

In the result, " the decision must be quashed, and the tribunal will then be able to hear the case again and give the correct decision."

From this judgment it will readily have been seen how the use of novel means to justice caused the writ of *certiorari* to fall for a while into disuse, until, with the coming of numbers of new statutory tribunals in recent years, resort has again been made to it in respect of their decisions. But more will be seen from it than that. For it also shows how often on request tribunals have resorted, for the sake of justice, to the use of " Speaking Decisions," enabling the Court of King's Bench to see at once whether the reasons therein given by the tribunal for their decision are wrong in law, in which case those decisions will be quashed by *certiorari*.

#### STRONG RESULTANT CONFIRMATION OF NEED FOR AN APPELLATE COURT AND/OR FOR "SPEAKING DECISIONS"

What then—for the express purposes of the present article—do we gain from these two judgments ? We gain in both essential regards. *First*: we find Singleton, L.J.—like the Lord Chief Justice in cases under the Rent Control Acts, 1946 and 1949, calling for an appellate court from the decisions of rent control tribunals thereunder—himself calling for an appellate court (and, at p. 127, suggesting what he regards as its best form). Likewise, and *secondly*, we can clearly see the close sympathy with which Denning, L.J., looks upon the desirability of " Speaking Decisions."

May we not hope, therefore, that now at long last some such appellate court from the decisions, both of rent control tribunals and of statutory tribunals in general may be created ? And, if we may not yet be able to look for that, then, and in the meanwhile, let us assuredly look to statutory tribunals in general and—for the express purposes of the present article—to those created under the Rent Control Acts, 1946 and 1949, in particular, to give their decisions, on request by either party, in the form of " Speaking Decisions," which will then be open to the Court of King's Bench—now, once again, become the Court of Queen's Bench—to quash, if wrong, by order of *certiorari*.

We can all assume that every statutory tribunal desires to do justice, and, in this manner, they can ensure that it will be done ; and we shall then soon see what I have in my earlier article called the " New Path to Justice " opening widely before our eyes. And so, let us close with the aspiration : " *Fiat Justitia.*"

## MISCELLANEOUS INFORMATION

### LABELLING OF FOOD

The Ministry of Food announces that, arising out of the current efforts to achieve economy and reduce staff, it will be necessary to terminate the service hitherto provided of advising manufacturers and other food traders individually about labels submitted for scrutiny in connexion with reg. 1 of the Defence (Sale of Food) Regulations and the labelling requirements of the Labelling of Food Order. This advisory service was established when the Defence (Sale of Food) Regulations were introduced in 1943. The number of labels that have

been submitted for scrutiny since then shows that the food trades have found the service useful ; and it is with considerable regret that the Minister has decided that the service must now be terminated. To deal with a large number of inquiries, however, about a wide variety of individual labels requires the employment of a number of staff ; and the needs of economy, and of staff reduction, are, in present circumstances, paramount.

The Ministry will retain its general responsibility for the administration of requirements under the Defence (Sale of Food) Regulations or under the Food and Drugs Acts as to the labelling of food.

**BAR POINT-TO-POINT RACES, 1952**

The Bar Steeplechases will be held at Little Kimble, near Princes Risborough (Bucks) on Saturday, May 3, 1952.

The course is the Old Berkeley Hunt Course at Kimble, where nine meetings were held before the war in addition to two successful ones since. It is a grass course, with an excellent view from the car park, situated half a mile from Little Kimble station and forty miles by road from London. (Route : Western Avenue, High Wycombe, Princes Risborough and Kimble. There will be six races : 2 p.m., Bar Heavyweight ; 2.40 p.m., Farmers ; 3.20 p.m., Pegasus Club Open ; 4 p.m., Bar Lightweight ; 4.40 p.m., King's Troop, Royal Horse Artillery ; 5.20 p.m., Adjacent Hunts Maiden Race.)

Schedules and entry forms may be obtained from the hon. secretaries (N. McElliott and Robin Dunn, c/o, I. Paper Buildings, Temple, E.C.4). Entries close on April 26. Car tickets can be purchased on the course at £1 each and should be exhibited on the car's windscreen.

Details as to reserved car park tickets, motor coaches and paddock tickets available to members and their guests may be secured from the notices of the club screened in the four Inns of Court.

Owing to the death of his late Majesty King George VI, patron of the club, it has been decided not to hold either the club dinner or ball until after the period of Court mourning, at which time the question will be reviewed.

**ROAD ACCIDENTS—JANUARY, 1952**

Accidents on the roads of Great Britain in January resulted in 14,195 casualties, including 377 killed and 3,347 seriously injured.

Compared with January, 1951, there was an increase of 678 in the total and of thirteen in the killed. The chief increases were in the figures for pedal cyclists, which rose by 199 to 2,709, and those for passengers in vehicles, which rose by 255 to 3,543.

Figures for pedestrians, on the other hand, showed little change. Casualties to adult pedestrians numbered 2,762 and casualties to child pedestrians 1,423, making a total of 4,185 or twenty more than in January, 1951.

Despite the continued upward trend, the accident figures for January were still considerably below those for January, 1938, when 15,745 casualties, including 514 killed, were reported.

**EDUCATION ESTIMATES, 1952-53**

One question about the restraint of local education authorities' expenditure is partially answered in the memorandum on the Ministry of Education estimates for the year 1952-53 (Cmd. 8488). This question relates to the financial effect, and the answer is partial because the full tale of restraint, particularly as regards capital projects, will not be reflected in accounts for 1952-53. Whether the nation has practised true economy in all the restraints imposed on this class of expenditure is a larger, and certainly debatable, question.

The Ministry's estimates assume total expenditure by local education authorities in 1952-53 amounting to £306 million, compared with £292 million in 1951-52 and a provisional total of actual expenditure of £247 million in 1950-51. In 1952-53, therefore, the increase of £14 million above 1951-52 would be below one-third of the £45 million approximate increase between 1950-51 and 1951-52. Much of the comparatively small increase of £14 million in 1952-53 is on aid to pupils (£24 million), loan charges (£2 million), and provision of milk and meals (£3½ million). One can imagine that without increases in salaries and wages, and in the cost of goods and services generally, total expenditure in 1952-53 would be less than in 1951-52; from which it may be assumed with reasonable safety that higher nominal expenditure conceals a loss of value. A striking illustration of converse movements of volume of service and amount of expenditure can be seen in the memorandum where the Ministry's staff numbering 3,975 (the peak number in a series of years) in 1948-49 is shown as costing £1,917,000, against 3,114 in 1952-53 costing £2,189,000; this probably exemplifies the widespread inflation throughout the national economy during that period and is not peculiar to educational and other public administration.

Total expenditure from the national Exchequer and local rates combined on education within the purview of the Minister of Education is estimated to increase from £318 million in 1951-52 to £328 million in 1952-53. The Ministry's grants to local education authorities in respect of 1952-53 are expected to be £9½ million higher than in 1951-52 (£187½ million instead of £178 million), and local education authorities' net expenditure less grants for 1952-53, i.e. net expenditure to fall on rates, is expected to be £4½ million higher than in 1951-52 (£118½ million instead of £113½ million).

**SOUTHWARK RECORDS**

During the war the Muniment Room of the London County Council was recognized by the Master of the Rolls as a depository for manorial and other records. Since then the Council has received many notable consignments of archives, but none more varied and valuable than

the collection just deposited by the Corporation of Wardens of St. Saviour, Southwark. Some of these records, taken from the triforium of Southwark Cathedral, were deposited with the Council last year. Now the bulk of the collection has been received at the County Hall.

These records, which remain in the ownership of the wardens, are on permanent loan to the council. The council has accepted responsibility for the maintenance and safe keeping of the archives, and is able to make them available to students and research workers. The records have never been published—although occasional reference has been made to certain of them—and they are likely to provide much material for historical research.

The records date from 1444, and the collection contains the usual variety of parish records, such as vestry minute books, accounts and contracts for decorating and altering the parish church, draft presents for the Archdeacon's visitations, and records of the poor and parish charities. However, among the records now deposited with the council are several rare items.

Among other interesting items are a large number of painted briefs of the seventeenth and eighteenth centuries. These were appeals issued under Royal Letters Patent for private charities to be read in church on Sundays, the collections being made after the service. The briefs should have been returned to the Archdeacon and are consequently rather rare. Typical of the objects of these appeals were those for "a poore distressed Polander" and for the "poore, sick and wounded soldiery" of the Parliamentary Army.

Town and country planning seems to be no new problem. During the sixteenth and seventeenth centuries efforts were made by the central government to curb overcrowding in London and to prevent the capital's too extensive growth. The wardens of St. Saviour were among the authorities required to submit returns about divided and newly erected houses. Several drafts of these returns are included in the collection, one of them referring to the erection of the Globe Theatre.

Also deposited by the wardens are the records of the Rectory Trustees, Collett's Education Foundation and the Newcomen Foundation. The administration of these two parish charities was the duty of the wardens for a long time but is now managed by separate bodies or trustees. There are two eighteenth century minute books for Collett's Foundation and the early title deeds of the estate. There is also a fine series of minute books from 1707 to the present day for the meetings of the governors of the parochial girls' school (later Mrs. Newcomen's school). In the first of these minute books we read a characteristic entry : "Order'd That a Wooden Ruffe be provided to be worn by such Children as play at Church or are guilty of such other Faults as ye Trustees shall think fit to publish in that manner." In the register of the boys' school we find that on September 12, 1840, Edward Lee, aged thirteen, was expelled for the shocking offence of laughing at Silas Harris, Esq., none other than a Warden and School Governor ! Records such as these provide a rare opportunity for historical research into educational methods.

**REVOCATION OF PRICE-REGULATED GOODS ORDERS**

An obsolete form of control of certain goods is to be removed by an Order made by the Board of Trade after consultation with the Central Price Regulation Committee. The new Order revokes the Prices of Goods (Price-Regulated Goods) Orders and thus removes from the scope of the Prices of Goods Act, 1939, the remaining goods still price controlled, under that Act, by a formula which relates maximum prices to the prices of similar goods in August, 1939. No changes in prices will result from the revocation of the Orders.

With the passage of time and the introduction of new types of goods, this form of control has become impossible to operate and for the majority of the goods listed in the Order now being revoked the effective price control is now a non-statutory arrangement with the suppliers. Where necessary these arrangements will continue in force; and, if the need should arise, the prices of these goods can be controlled under the Goods and Services (Price Control) Act, 1941, or the Defence Regulations, which are used to control other goods.

The principal goods listed in the Order now being revoked are ropes and twines, leathercloth, upholstery stuffing materials, sewing machines, sanitary towels, office machinery, cash registers, wallpaper, wrapping paper, hand tools, containers (boxes, bags, bottles, etc.), paraffin oil, turpentine, soap, spectacles, paints, varnishes, etc., and invalid carriages; and also sewing cottons, floor coverings, and clocks and watches in so far as these are not price-controlled by Orders made under the Goods and Services (Price Control) Act, 1941.

The Order is the Prices of Goods (Price-Regulated Goods) (Revocation) Order, 1952, and came into operation on February 7, 1952.

**LUCK**

How is it that whenever I want to go to law  
The Defendant is a man of straw ?

J.P.C.

## REVIEWS

**The Public Utilities Street Works Act, 1950.** By Harold Marnham and W. O. Rouston. London : Charles Knight & Co., Limited. Price 25s.

The Public Utilities Street Works Act, 1950, is comparatively short but very complicated. We have already noticed another work upon it, but until the professions concerned get used to its working there is certainly no harm in having it treated by a different hand. The relation between highway and street authorities and statutory undertakers had been strained, even before the first world war, and became more so in the period between the wars. The Act was the result of examination of the problem by a committee set up for the purpose, and although our Practical Points already indicate that obscurities exist it certainly is true that the Act has brought some order into a confused position. The learned authors treat the Act under the appropriate headings of the street works code ; the code which is to have effect where apparatus is affected by road, bridge, or transport works, and finally under the miscellaneous general headings from s. 26 onwards. Each section is annotated and, so far as we have yet had the opportunity to use the work in practice, we have found the notes complete and accurate. In an appendix there will be found Memorandum 665 issued from the Ministry of Transport, which gives the explanation adopted by the Minister's advisers upon many sections, and also the rules relating to the Act under the Land Charges Act, 1925. As a companion to works already issued, treating of the Act, we think this work will be found convenient in use and reliable—so far as at present opinions can be formed upon these new provisions.

## NEW COMMISSIONS

### WEDNESBURY BOROUGH

Edward Noel Chorley, 99, Park Lane, Wednesbury.  
Benjamin John Mason, 27, Wood Green Road, Wednesbury.

### WILTS COUNTY

The Hon. Mrs. Pamela Mary Violet Maurice, Ibsbury House, Marlborough, Wilts.

## LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 34.

### A PROSECUTION UNDER THE LAW OF PROPERTY ACT, 1925

A thirty year old van dweller of no fixed abode appeared at Kingston-on-Thames Magistrates' Court on March 17 and 24 last, to answer two charges alleging a contravention of s. 193 of the Law of Property Act, 1925. The first charge alleged that the defendant had camped on a certain Common within the Urban District of Esher and the second that, not being a Commoner, he had permitted a horse to graze on such Common.

For the prosecution, which was initiated by the police and supported by Esher Urban District Council, it was stated that the council were Lords of the Manor in relation to the Common in question and owned the freehold of it, subject to the rights of the Commoners. The council had granted a licence to a local cricket club to lay out a cricket pitch on the Common and the defendant's horse was found grazing on the cricket pitch and his van drawn on the Common itself, where he was living in it with his dog.

The horse was found on inspection to be unfit for work, and was taken charge of by the People's Dispensary for Sick Animals ; the dog was taken charge of with the assistance of the R.S.P.C.A., and the council towed the caravan to their highway depot.

The council's assistant solicitor, Mr. A. F. C. Boyes, to whom the writer is greatly indebted for this report, was called for the prosecution to prove that the land was a Common to which s. 193 applied, and also to produce and prove the Limitation Order made by the Minister of Agriculture and Fisheries.

At this stage the court became aware that the defendant, an ex-service man on a disability pension, was waiting for a bed in a local hospital for treatment and the hearing was thereupon adjourned *sine die*.

### COMMENT

Mr. Boyes states that he has brought this case to notice because very few people realize that the Law of Property Act, 1925, contains penal provisions. Section 193 of the Act relates to Metropolitan Commons and any manorial waste or Common which is wholly or partly situated within a borough or urban district, and any other land which is subject to rights of Common and to which the section may, by an order of the Minister of Agriculture and Fisheries,

## PERSONALIA

### APPOINTMENTS

Mr. J. B. Harwood, A.C.C.S., A.I.M.T.A., A.R.V.A., clerk and chief financial officer to the Oteley U.D.C., has been appointed to a similar position with the Wolverton U.D.C. He succeeds Mr. A. J. W. Jeffery, D.P.A., A.C.I.S., who has been appointed secretary to the West Kent Main Sewerage Board. Mr. Harwood has had previous experience with the Denby Dale, Alsager and Bollington urban district councils.

Mr. E. Morris Gibson, solicitor, of Cheam, Surrey, has been elected chairman of the directors of the Sutton District Water Company.

Mr. T. S. Burghart has been appointed probation officer to the Middlesex Combined Probation Area. He was previously a probation officer in Hampshire and during the war he served with the Royal Air Force.

## NOTICES

The next court of quarter sessions for the borough of Bridgwater will be held at the Court House, Northgate, Bridgwater, on Friday, April 25 at 10.30 a.m.

The next court of quarter sessions for the city of Coventry will be held at the County Hall, Coventry, on Wednesday, April 16, at 11 a.m.

## PARLIAMENTARY INTELLIGENCE

### Progress of Bills

### HOUSE OF LORDS

Tuesday, April 1

MOTOR VEHICLES (INTERNATIONAL CIRCULATION) BILL, read 3a.

Thursday, April 3

COSTS IN CRIMINAL CASES BILL, read 1a.

CINEMATOGRAPH FILM PRODUCTION (SPECIAL LOANS) BILL, read 2a.

EXPORT GUARANTEES BILL, read 2a.

### HOUSE OF COMMONS

Monday, March 31

POST OFFICE AND TELEGRAPH (MONEY) BILL, read 2a.

NEW TOWNS BILL, read 2a.

Tuesday, April 1

NORTH WALES HYDRO-ELECTRIC POWER BILL, read 2a.

## IN MAGISTERIAL AND COURTS

be applied. Subsection 4 of s. 193 provides as follows : " Any person who, without lawful authority, draws or drives upon any land to which this section applies any carriage, cart, caravan, truck, or other vehicle, or camps or lights any fire thereon, or who fails to observe any limitation or condition imposed by the Minister under this section in respect of any such land, shall be liable on summary conviction to a fine not exceeding forty shillings for each offence."

Mr. Boyes states that in the case of very extensive Commons within the urban district of Esher, the Minister has made a Limitation Order imposing conditions which provide (*inter alia*) that animals shall not be grazed on the Common except by a Commoner.

It will be recalled that s. 14 (1) of the Road Traffic Act, 1930, prohibits the driving of a motor vehicle on to Common land under a penalty of £5, but contains a proviso that it shall not be an offence under the section to drive a motor vehicle, for the purpose only of parking, on any land within fifteen yards of a road on which a motor vehicle may lawfully be driven.

Most members of the public forget, however, that there is a second subsection to s. 14 of the Act of 1930 which specifically provides that nothing in that section is to prejudice the operation of s. 193 of the Law of Property Act, 1925, and therefore the proviso to s. 14 (1) of the Act of 1930 does not apply to Common lands within an urban district or borough. It is also frequently overlooked that the proviso to s. 14 permits going upon land adjoining a road only for the purpose of parking ; it does not authorize the driving of a living van within fifteen yards of the road.

R.L.H.

No. 35.

### TO WHOM DID THE COAL BELONG ?

A lorry driver and his foreman appeared before the Taunton magistrates last month, charged with stealing coal valued at 5s., the property of the Railway Executive.

For the prosecution, it was stated that coal arriving at Taunton Goods Station was loaded on to merchants' lorries, and pieces falling between the trucks and lorries " were by no means abandoned." A railway employee picked up such coal almost daily and it was used in railway office fires and boilers.

The chairman said to the prosecutor: " You do not think the Railway Executive is committing any offence in doing that ? " and the prosecutor replied: " No, there is ample authority that property left on railway premises becomes the property of the Executive."

Defending solicitor said that if coal was delivered to a person it belonged to that person, but if any of the coal which should have been delivered to him fell on the track it was claimed by the Railway Executive.

" In the one case," he said, " an individual is guilty of theft, but the Railway Executive can take it and burn it in their own offices."

Both defendants were convicted and given an absolute discharge on payment between them of five guineas costs.

#### COMMENT

Mr. D. J. Cooper, solicitor, of Taunton, who prosecuted in this case and to whom the writer is indebted for this report, relied upon the old case of *R. v. Pierce & Co.* 117 as authority for his reply to the chairman referred to above and there can be no doubt that he was correct.

It will be recalled that in *R. v. Pierce, supra*, it was decided that property left in a railway carriage is in the possession of the railway company and that a railway servant who appropriates it instead of taking it to the proper officer is guilty of larceny. Mr. Cooper points out that, apart altogether from statutory authority, another method of approach which leads to the same result is that of the common law rule that everything found or present on the land of X belongs to X as against the whole world except Y who can establish his right as the original owner and loser thereof. Until Y comes forward to claim his property, any person stealing it must steal from X, the apparent owner. In the case referred to above the persons who stole the coal were, of course, not the true owners.

(The writer is also indebted to Mr. E. J. Weston, clerk to the Taunton Justices, for information in regard to the case.) R.L.H.

#### PENALTIES

**Oldbury Juvenile Court**—March, 1952—causing £28 worth of damage by breaking street lamps (two defendants)—each fined 40s. Two boys aged eleven and twelve caused the damage between January 28 and February 16. The elder boy said that he used a catapult, the younger boy merely threw stones.

## THE SUPERMAN

In the complex conditions of this twentieth century in which we live the demand for specialization is well-nigh insatiable. Not only those men and women who desire to achieve distinction in their chosen vocation, but even those who are satisfied to secure a competent livelihood, are practically compelled to limit themselves to the attainment of efficiency in the grasp, so to speak, of a single twig issuing out of some small branch on one of the many boughs of the Tree of Knowledge. This is the most they can hope for, whether they pursue a career on academic lines or in one of the learned professions, in applied science, in trade or manual labour. The speed of modern life leaves them neither the leisure nor the energy to seek out the " why " of what they are doing ; it is enough for the vast majority of them to master the " how. "

The dichotomy of interest is most disastrous in connexion with the art of government. In almost every national community the ministers are chosen chiefly from the ranks of the politicians, whose only qualification is that of being able to speak in public. To be a good orator is considered more important than to be versed in the art of administration ; the vital importance of a liberal education is altogether disregarded. From this arises the poor administrative standard of public life, the susceptibility of the masses to propaganda and the specious juggling with words. Consider how, even today, such terms as " democracy " and " freedom " have totally different meanings (for example) in the minds of a Frenchman, a Spaniard, a member of the white minority in South Africa, a Scandinavian national, a native in a British colony and a citizen of the Soviet Union. The narrow and parochial view induced by the present system of education is responsible for many of the ills that afflict mankind today ; a world-outlook, whether among statesmen or scholars, is so rare as to be practically non-existent.

**Oldbury**—March, 1952—failing to send a child regularly to school—one month's imprisonment. Defendant had seven previous convictions for the same offence.

**Middlesbrough**—March, 1952—causing unnecessary suffering to a cat—one month's imprisonment. Defendant, aged thirty-two, was asked to call his Alsatian dog off a cat which it was worrying. He refused and the cat was found covered in blood gasping its last breath in the street ; its back appeared to be broken.

**Barnsley**—March, 1952—stealing brooches, bracelets and a plastic Easter egg from a local store—fined £5. To pay 30s. costs. Defendant, a thirty-five year old engineer, earning £1,000 a year, was unable to account for his actions.

**Staple Hill**—March, 1952—selling mincemeat deficient in suet content (two charges)—fined a total of £40. To pay £7 6s. costs. One sample was 1.3 parts in 100 deficient and the other 1.7. Defendant company had previously manufactured mincemeat for fifty years without complaint. The company attributed the trouble to lumpy mincemeat.

**Bristol**—March, 1952—stealing cutlery, crockery, glassware and linen value £16—fined £20. Defendant, a forty-two year old waitress, stole the property from a hotel where she was employed. She earned an average of £1 a week and asked for two other similar offences to be taken into account.

**West Penwith**—March, 1952—stealing 44 ft. of timber, value £2 4s., and an article of lady's underwear (two charges)—six months' imprisonment each charge (consecutive). Defendant had previously served a prison sentence and had been at borstal.

**Penzance**—March, 1952—using obscene language at the railway station—fined £5. To pay £1 11s. costs. Defendant, a seventy-nine year old newsvendor, had previous convictions including one for a similar offence.

**Bristol**—March, 1952—malicious damage to property—conditional discharge. Defendant, a fifty-eight year old Irishman of no fixed abode, deliberately smashed a large display window at a well known store so that he would be sent to prison. He took a fur coat from the window, value £27, and crossed the road with it. The charge of stealing the coat was not proceeded with.

Herein lies the great weakness of the present system, which thus bears within itself the seeds of its own destruction. Every individual is so intent on becoming an expert in his own particular job, whether humble or important, that nobody has the time or the inclination to stop to take the broad view, to catch sight, if only for a fleeting instant, of the end at which all these busy people are supposed to be aiming. Like the workman in Mr. Chaplin's film *Modern Times*, which cleverly satirized this trend, we are all spending our energies in tapping, a thousand times a day, one particular joint on each of the millions of facsimiles that come rolling off the conveyor-belt of our workaday life ; like that same workman we neither see nor have the time to speculate on the scope and nature of the finished product.

This trend is particularly regrettable at a time when the general advancement of knowledge has afforded to some few thinkers glimpses of a region where such studies as philosophy, physics and mathematics, and others more disparate still, may meet on common ground. What might not the human mind achieve if it were possible to find some supreme intellect capable of grasping all the threads together, and weaving them into one great pattern of encyclopaedic, co-ordinated knowledge, pure and applied ? If the diplomat were also historian, sociologist and moral philosopher ; if the physicist took equal interest in ethics and psychology ; if the builder found time to study aesthetics, the journalist paid attention to philology, and the economist had some acquaintance with the humane arts, what a very different place the world might be ! Unfortunately the experts are all the time striving to pull as hard as possible in different directions —a process that must eventually result in pulling the whole system to pieces.

These reflections are stimulated by the celebration this week of the five hundredth anniversary of the birth of one whose extraordinary versatility may well entitle him to be considered the greatest universal genius in history. Leonardo da Vinci was born in Tuscany on April 15, 1452, the illegitimate offspring of a notary and a peasant girl. His youth was spent in Florence, that small City which, in the short space of three hundred years, gave birth to such a multitude of men of genius whose names are among the greatest in the fields of statesmanship, literature, painting, sculpture, architecture and science. Between the thirteenth and the fifteenth centuries Florence was the home of Lorenzo de' Medici, Machiavelli, Dante, Boccaccio, Petrarch, Giotto, Michelangelo, Botticelli, Donatello, Brunelleschi, Galileo and others too numerous to mention. In the person of Leonardo the Italian Renaissance reached its culmination : in his astonishing genius converge the greatest intellectual endowments of that magnificent age.

Nature was indeed lavish in her gifts to this amazing man. Splendid beauty of person and extraordinary physical strength were his, together with all the social graces of charm, courtliness and ready aptitude for all pursuits and all occasions. No other man in history has attained his supreme eminence in so many branches of art and science at once ; it is difficult to avoid the use of superlatives in speaking of one who ranks among the greatest of painters, sculptors, architects, engineers, mechanicians, inventors, natural scientists and anatomists. His mental energy and his intellectual curiosity are as overwhelming as his inventiveness and technical skill.

At the age of twenty-nine Leonardo moved to Milan, where he served the Sforza family for many years in the capacity of chief military engineer. Here he designed a colossal equestrian statue which is said by eye-witnesses to have surpassed the finest work of Donatello and Verrocchio ; here he also painted such famous works as the Last Supper and the Virgin of the Rocks. He was consulted in connexion with the cupola of Milan Cathedral, and here he practised town-planning, church-architecture, anatomy and hydraulics, and studied Latin.

In 1500 Leonardo returned to Florence, where he was commissioned to decorate the Great Hall of the Palazzo Vecchio, and where he spent some years in scientific experiment. Seven years later he was appointed Court painter and engineer to Louis XII of France ; in 1513 he went to Rome, where he was concerned with the draining of the Pontine Marshes and served Pope Leo X. Later he went to France at the invitation of Francis I, and there in his old age prepared designs for such diverse projects as the canalization of the Loire, the construction of a double spiral staircase and the organization and staging of Court masques. He died in France in 1519 at the age of sixty-seven.

To celebrate the quincentenary of his birth the Royal Academy of Arts and the Science Museum have collaborated in an Exhibition of Leonardo's works at Burlington House. Here may be seen copies by his pupils of such world-famous masterpieces as the portrait of Mona Lisa del Giocondo, the picture of Leda and the Swan and the huge mural painting of the Last Supper ; original drawings and studies on many religious and secular subjects ; a great cartoon showing the Madonna and Child, with St. Anne and St. John ; innumerable drawings of the human form and features ; detailed sketches of horses and other animals, and studies of the head, the torso and the limbs from every possible angle. Side by side with these are anatomical studies of the muscles, nerves, bones and sinews, diagrams of internal organs of the body, the heart and the arteries, and a striking drawing of the foetus in the womb. Among his manifold activities this amazing man had studied anatomy, not only theoretically, from the books, but also from living subjects and

in the dissection-room ; the originality of his methods extended, in one experiment, to injecting the ventricles of the brain with wax, to facilitate study after dissection, and, in another experiment, to making a cast of the aortic valve of the heart.

In science and engineering his devices are so startlingly modern that the observer has continually to remind himself that Leonardo lived in the fifteenth century and not the twentieth. In the Exhibition may be seen drawings and diagrams for armoured vehicles, breech-loading guns, multi-barrelled cannon, explosive shells, long-range mortars, "Bailey" bridges, aeroplanes, helicopters, parachutes, "bulldozers," diving-equipment, submarines, canals, locks and dams, clock-mechanisms (including a hydraulic alarm-clock), machines for grinding needles, lenses and cylinders, hydrometers, anemometers and self-indicating balances. There are maps of various parts of Europe, resembling the aerial maps of the present day, and diagrams illustrating methods of town-planning, with streets on an upper level designed for pedestrians and those below for traffic, an elaborate sewage system being shown in section. There are also a large number of architectural designs and plans.

The visitor to the Exhibition will come forth dazed and bewildered. With pride and hope in the realization of what the human intellect is capable of achieving will be mingled a deep humility at the thought of all the pain and turmoil, the years of study and preparation, that we ordinary people have to go through to attain expertise in one small corner of the vast field that Leonardo traversed :

" Why man, he doth bestride the narrow world  
Like a colossus, and we petty men  
Walk under his huge legs and peep about  
To find ourselves dishonourable graves."

A.L.P.

## SOUND TUITION for your

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## PRACTICAL POINTS

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**1.—Children and Young Persons—Detention in place of safety under s. 67 (1) of Children and Young Persons Act, 1933—Whether juvenile should be brought before next juvenile court.**

Section 67 (1) of the Children and Young Persons Act, 1933, provides that an authorized person may in certain circumstances take a child to a place of safety and that the child may be detained there "Until he can be brought before a juvenile court." Subsection (2) provides that when a child is brought before a juvenile court and the court is not in a position to decide whether to make an order, the court may make an interim order for the continued detention of the child or young person in a place of safety, but such an interim order is not to remain in force for more than twenty-eight days.

I should appreciate your advice on the point whether a child taken to a place of safety under subs. (1) must, or should, be brought before a juvenile court within twenty-eight days from being taken to a place of safety under subs. (1), even if the person who has taken the child to the place of safety is not by that time in a position to present a case fully to the court in such a way that the court would be able to make a final order. Personally I think that on a strict reading of the section it can be argued that the child should be brought before the next available juvenile court whether the case is fully ready or not. Furthermore it could be said that the general object of the section is to ensure that a child is not kept in a place of safety for a long period without the court having cognizance of the fact. On the other hand it has been suggested to me that it is undesirable in the interest of a child to bring the child before the court when it is quite clear there will only be an adjournment and the child will have to come before the court later. In other words it is suggested that the word "can" in the expression "until he can be brought before a juvenile court" at the end of subs. (1), should be interpreted as meaning "Can" be brought before a juvenile court with a reasonable prospect of the court being enabled to make a final order."

SOUFLE.

*Answer.*

We find it quite impossible to read the additional words into s. 67 (1). In our opinion the plain meaning of the subsection is that the child or young person should be brought before a juvenile court at its next sitting, whether the evidence can be completed or not. It then becomes the responsibility of the justices to dispose of the child or young person, which is in accordance with the general principle that people who have been deprived of liberty, even for their own benefit, should appear as soon as possible before a justice or justices.

We do not think the fact that twenty-eight days is the period mentioned in subs. (2) affects questions arising under subs. (1), and we even suggest that a special juvenile court should be arranged if that is necessary in order to avoid long detention in a place of safety before appearance in court.

**2.—Highway—Dangerous footway—Fencing by local authority.**

In 1934/35 the council constructed a highway, the western side of which is one of the semi-principal shopping areas for the locality. Owing to the contour of the land, the footpath for a distance of approximately 650 feet was raised to a height of approximately three feet above the carriageway graduating to normal level. The council considered at the time the question of providing a guard rail, pursuant to their powers under s. 149 of the Public Health Act, 1875, along the edge of the footpath, but this was not proceeded with having regard to objection made by traders that the rail would impede delivery from vehicles to their business premises. The council is again considering the question of guard rails, and I shall be glad to have your opinion as to their legal liability in the event of injury to any pedestrians in the absence of guard rails being provided.

FINEX.

*Answer.*

Since it appears that the local authority have altered the highway in such a manner as to create a potential danger to users, we consider that they must take such steps as are reasonably necessary to make the pavement safe. If they do not do this, then they may be liable in respect of injury resulting from their failure. If the most practicable way of guarding the pavement is by the provision of rails, then the local authority may proceed under the Act of 1875, subject to the rights of compensation to the frontagers which arise under s. 308 of the Act.

**3.—Husband and Wife—Maintenance order—Wife in receipt of assistance—Authority given to collecting officer to pay maintenance to board.**

A maintenance order has been made in the usual form directing a husband to pay certain sums for the maintenance of his wife and

children through me as collecting officer. The husband has vanished and the wife is receiving relief. I have today received from the National Assistance Board area officer a typed form signed by her authorizing me to pay to the area officer all moneys received from her husband which are payable under an order of the justices made at the petty sessional court.

I shall be glad of your opinion on the following points :

(1) As this authority is for payment of all moneys which are payable, it presumably cannot cover any moneys which become payable after the date of the authority.

(2) That, in any case, I should account to the wife direct for any moneys paid to me, and only take her receipt for payments made by me.

It appears to me that if a wife can give an authority under which I am to pay maintenance money to some other person this could result in trafficking in moneys payable under maintenance orders.

SEACREST.

*Answer.*

(1) If it is intended that the authority should apply to future payments, it would no doubt be well to insert the words "or which shall become payable."

(2) No doubt this is strictly correct, but we do not think there is any practical objection to payment being made to a public authority at the request of the wife. We have heard of many cases in which wives have given authority for payments to be made to some other person and have not heard of any unfortunate results.

**4.—Landlord and Tenant—Rent Restrictions Acts—House not within Acts converted into flats—Loss of identity.**

Until 1944 X lived in a dwelling-house in a provincial town the rateable value of which was £100 per annum. It was thus outside rent control. Up to that date it had always been owner-occupied. In 1944 X converted the dwelling-house into four flats, spending very little money on the conversion, and by agreement with the rating authority each flat was separately re-assessed in the sum of £75. Each flat is about the same size and has been let by X unfurnished at £125 per annum, tenants paying the rates. The tenant of one of the flats wishes to apply for a reduction in rent and rates. Should he bring either or both his applications before the rent tribunal or the county court, and should one be dealt with before the other? What reduction can the tenant hope to get both as regards rent and rates? Would there be any difference in the position if X could show that by reason of the amount spent on the conversion into flats the premises had lost their identity?

CINCOQ.

*Answer.*

The amount spent on conversion may not be much of a criterion : e.g., in an expensive house with good landings and a w.c. and bath already existing on each floor, a few pounds for a partition and front door on each landing will create completely self contained flats, and the judge might find as a fact that the old house had lost its identity and decline to apportion. The question of lost identity is one of fact and degree : *Mitchell v. Barnes* [1949] 2 All E.R. 719. Application should first be made to the county court, as in *Rice v. Capital and Provincial Property Trust, Ltd.* [1950] 2 All E.R. 174, where the facts were, it seems, essentially the same as here. It looks as if a substantial reduction may be obtainable, but so much turns upon the court's view of facts that we do not think prophecy safe. The judgment in the case last cited, and earlier cases there considered, should be carefully examined.

**5.—Landlord and Tenant—Rural worker—Grant under Act of 1926—Whether within Rent Restrictions Acts.**

In or about 1935 a grant was obtained for the renovation and improvement of a dwelling-house under the Housing (Rural Workers) Act, 1926, *et seq.* The house had previously always been owner occupied, there was therefore no standard rent. The house was subsequently let at the maximum rent permitted, i.e., 4s. per week, which was raised to 6s. per week in consequence of a decision of the Agricultural Wages Board. The tenant was not employed in agriculture, but could be classed as a rural worker.

This tenant died in September, 1951. He had living with him at the time of his death his daughter and her husband who are still occupying the property. The landlord has since the death of the original tenant repaid the amount of the grant to the county council. The landlord has demanded a rent of 20s. per week but this is being resisted by the occupier. No rent has been accepted from the occupier. Is the

house subject to any rent control, and if so how can the maximum permitted rent be ascertained? Is the occupier a protected tenant?

DAVIT.

*Answer.*

The relation between the Housing (Rural Workers) Act, 1926, and the Rent Restrictions Acts was before the Court of Appeal in *Blackmill, Ltd. v. Straker* [1949] 2 All E.R. 919; 114 J.P. 14. Though repayment of the grant by the owner frees the house from rent control under the Act of 1926, by virtue of the proviso to s. 3 (1), it seems that, in such a case as this (though not in all cases where the Act of 1926 has been used) the rent which was in fact paid in 1939 became the standard rent upon enactment of the Rent and Mortgage Restrictions Acts, 1939, and that the tenant became a protected tenant thereunder. We infer that the deceased tenant left no widow; if so, his daughter residing with him at his death became tenant by the definition in s. 12 (3) (g) of the Act of 1920.

#### 6.—Local Government Act, 1933, s. 164—Disposal of land by local authorities.

I refer to P.P. 9, 115 J.P.N. 830, and should be glad to know if your answer would be the same if the following terms were involved:

2. For a term of seven years and then from year to year until determined by either party on six months' notice.

3. For a period of five years giving the lessee the option of renewing for a further five years.

ARCN.

*Answer.*

In our opinion, consent is required in both the cases put.

#### 7.—Local Government Procedure—Committee—Delegation to sub-committee.

This council, a fire authority for the purposes of the Fire Services Act, 1947, have delegated to the fire brigade committee all their functions under the Act other than the powers of raising a rate or borrowing money. The fire brigade committee wish to appoint a sub-committee to exercise all the functions of the authority under the Fire Services (Disciplinary) Regulations, 1948. Could such a sub-committee have plenary powers or would its actions, e.g., hearing and deciding appeals, require to be confirmed by the fire brigade committee? The writer knows of no relevant statutory or other provisions with regard to delegation other than s. 20 of the Act, article 18 of the regulations, and s. 85 of the Local Government Act, 1933. None of these enactments would authorize a committee having plenary powers to further delegate those powers to a sub-committee. BOMBIE.

*Answer.*

No; a committee may appoint sub-committees to advise or investigate, but the general rule *delegatus non potest delegare* precludes its entrusting to a sub-committee the powers delegated to it by the council.

#### 8.—Magistrates—Practice and procedure—Charge of manslaughter by driving—Justices find no *prima facie* case—Committed for trial for dangerous driving without further evidence by prosecution.

I am charged, on an information in writing, with manslaughter in connexion with the driving of a motor car by him.

No information in writing has been laid against A charging him with dangerous driving contrary to s. 11 of the Road Traffic Act, 1930, but, in accordance with s. 21 of the Act, he was warned that the question of prosecuting him for dangerous or careless driving would be taken into consideration.

After hearing all the evidence offered on the part of the prosecution and, after all the requirements of s. 12 of the Criminal Justice Act, 1925, have been complied with, the examining justices are of the opinion that the evidence is not sufficient to put A upon his trial for manslaughter, but they are of the opinion that it is sufficient to put him on trial on a charge of dangerous driving.

Your opinion on the following points would be appreciated:

1. Have the examining justices power to commit A for trial on a charge of dangerous driving on the evidence already given, or will they have to direct that the charge of dangerous driving be reduced to writing and for all the witnesses to be examined before them once again on the dangerous driving charge and, at the end of the prosecution's evidence, for the dangerous driving charge to be read out to A and the requirements of s. 12 of the Criminal Justice Act, 1925, complied with?

It seems to me that A must be given full opportunity to deal with the specific new charge (whatever it may be) by cross-examining the witnesses for the prosecution, giving evidence himself or calling evidence on his own behalf and making submissions (if any) on the new charge.

2. Assuming that the reduced charge of dangerous driving can be made and, if this is not reduced to writing and A so specifically charged, how can the justices comply with the requirement that the caption to the depositions must recite the charge upon which A is committed for trial?

3. Does the term "any indictable offence" in s. 25 of the Indictable Offences Act, 1948, include "dangerous driving"?

4. Is it proper for A's counsel to submit that there is no case to answer immediately after the last witness for the prosecution has given his evidence or should the provisions of s. 12 (2) to (5) Criminal Justice Act, 1925, be complied with before this is done?

5. Would the same procedure apply in the case of, say, an information laid for larceny contrary to s. 2 of the Larceny Act, 1916, but a *prima facie* case of receiving stolen property contrary to s. 33 of the Act only being disclosed by the depositions?

JTPE.

*Answer.*

1. At the end of the prosecutions ordered the justices must decide whether the depositions disclose a *prima facie* case of the commission by the accused of any indictable offence or offences. (Indictable Offences Act, 1848, s. 25.) If any such offence is disclosed the justices must read that charge, or those charges, to the accused as required by the Criminal Justice Act, 1925, s. 12 (2). There is no need for the witnesses to be recalled. The accused is entitled, after hearing what the charges are, to give such evidence and to call such witnesses as he wishes in pursuance of s. 12, *supra*.

2. The charges on which the accused is committed for trial should appear on the caption to the depositions. The prescribed form in the schedule to the Indictable Offences Rules, 1926, requires that the offence be stated "as in the warrant of commitment."

3. Yes.

4. We think counsel should wait until the provisions of ss. 12 (2) to (5) have been complied with, as he then knows to what charges he must address his mind.

5. Yes.

#### 9.—Magistrates—Practice and procedure—Court fees—Summary trial of charge of dangerous driving—Appropriate fee.

What are the court fees to be charged by a clerk to the justices under the first schedule to the Criminal Justice Administration Act, 1914, on the summary hearing of a charge of dangerous driving—4s. or 15s.?

JTPE.

*Answer.*

In our view the appropriate fee is 4s. because although this is an indictable charge and it is tried summarily, it is not "dealt with summarily in pursuance of the Summary Jurisdiction Act, 1879, and any Act amending the same."



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**10.—Rating and valuation—Deserted wife remaining in matrimonial home—Liability for rates.**

A is rated as occupier of a house. He has recently left his wife and child, and gone to live in another parish outside the council's area, as a lodger. He states that he allows his wife the sum of £2 per week, and that he has also given her the furniture. Under these circumstances can the rating authority make Mrs. A responsible for the rates? FEO.

*Answer.*

Occupation for rating purposes is always a matter of fact. In the normal matrimonial home, the husband will be naturally treated as the occupier, and this presumption of fact is not destroyed by a temporary absence, during which he continues to accept responsibility, as in a case of employment elsewhere, or military service, while the wife remains in the matrimonial home. In the case before us, it does not appear whether the husband has formed the intention of deserting his wife, and of living separate from her permanently. If such an intention can be inferred, it is open to the rating authority to put the wife's name in the rate book, with a view to treating her as the occupier liable for the rates. Rates cannot actually be recovered from her, so long as her husband's name appears alone in the rate book.

**11.—Real Property—Conveyance under statutory power—Finance Act, 1895.**

As you are aware, local authorities acquire land by virtue of some statutory power, and I have had occasion recently to consider the effect of s. 12 of the Finance Act, 1895, in relation to the acquisition of land under general statutory powers. I appreciate that a conveyance of land acquired under compulsory purchase order powers must be produced to the Commissioners under s. 12 and that the conveyance of land vested in a local authority by virtue of any Act must also be produced under that section. I shall be glad therefore of your views as to whether the conveyance of land acquired under general statutory powers, e.g., the Housing Act, 1936, or the Local Government Act, 1933, ought to be produced under the section.

FINE.

*Answer.*

In our opinion, conveyance of land acquired under the statutory powers which you mention must be produced to the Commissioners of Inland Revenue under s. 12 of the Act of 1895. We know of no exemption from this requirement. See 114 J.P.N. 56.

**12.—Road Traffic Acts—Construction and Use Regulations—Vehicle left in forecourt of a shop—Brake not applied—Reg. 82 (3).**

I shall be glad to receive your opinion on the following facts.

A driver of a motor vehicle quits that vehicle leaving it standing on the forecourt of a shop. Sometime after the driver had left the car it ran backwards down a hill, finally being brought to stop by a brick wall. The question is whether proceedings can be taken under the above-mentioned regulation.

It seems to me that in view of s. 30 of the Road Traffic Act, 1930, and reg. 94 of the Construction and Use Regulations, 1947, before an offence is committed against reg. 82 (3), a driver must have got out of his vehicle and failed to set the brake effectively whilst that vehicle was on a road within the meaning of the Road Traffic Act, 1930, and that if a car is left on private property without the brakes being effectively applied then no offence is committed.

I should, however, be glad to have your opinion and to know whether you consider that there would be any difference if a car were left in the driveway to a house instead of a forecourt to a shop. JUNG.

*Answer.*

On the authority of *Thomas v. Dando* [1951] 1 All E.R. 1010 we think that the forecourt of a shop, in the absence of exceptional circumstances, is not a road. We agree that reg. 82 (3) of the 1947 regulations applies only in the case of vehicles used at the material time, on a road.

It is immaterial whether the vehicle is left in a private drive or in the forecourt of a shop which is not a road.

It is to be noted that in the case of offences on and after January 1, 1952, the appropriate regulations are the Motor Vehicle (Construction and Use) Regulations, 1951.

**13.—Shops Act, 1950—Trading elsewhere than shop—Photography outside lawful hours.**

It is proposed to initiate proceedings under s. 12 of the Shops Act, 1950, for carrying on a retail trade or business (to wit, the taking of photographs) at a time when it would be unlawful in that locality to keep a shop open for the purposes of retail trade or business of that class. The facts are that a photographer stands in a public park taking snapshots of persons. The person photographed is then given

a numbered card, pays a sum of money to the photographer and calls next day with the card at the photographer's shop and collects the finished photograph.

It is admitted that, if this were a retail trade, it was being carried on at a time when it would be unlawful to keep a shop open for a similar purpose, but it has been suggested that the taking of snapshots in the circumstances outlined above does not constitute the carrying on of a retail trade or business: *Newman v. Lipman* [1950] 2 All E.R. 832; 114 J.P. 561. This case was, however, not decided under the Shops Acts, and it seems to me that the taking of photographs and the receipt of money may constitute a retail trade or business for the purposes of s. 12 of the new Shops Act (formerly s. 9 of the Act of 1912), which is designed to prevent shop assistants from being overworked.

The point is also raised that the park is not a place within the meaning of the Act, as it is not akin to a shop and the well known case of the *Eldorado Ice Cream Company v. Clark* [1938] 1 All E.R. 330; 102 J.P. 147 is quoted in support. That case was however decided under s. 13 of the Shops (Sunday Trading Restrictions) Act, 1936, where quite different words are used in connexion with a "place" as compared with the wording of s. 12 of the Shops Act, 1950, regarding a "place."

It seems to me from the wording of s. 12 of the 1950 Act that a "place" means what is says and that, in the case under review, a public park is a place within the meaning of this section. AILL.

*Answer.*

In *Eldorado Ice Cream Co. v. Clark, supra*, the King's Bench Division did not really deal with the question whether the street was a place, and the judgment was not accepted as binding by the Scottish Court in *Nixon v. Capaldi* (1949) Scottish Law Times 381: see 114 J.P.N. 425. As you will see, therefrom, some English magistrates in dealing with the Shops Act itself have preferred the Scottish decision, and that decision gives ground for holding that a man trading in a park is trading in a place, contrary to s. 12.

In *Newman v. Lipman* also cited by you, the facts were much like your own case, except that the photographer was performing in a street, not in a park. The local Act, however, did not speak, as does the Shops Act, of carrying on retail trade or business: it spoke of selling goods, and the Divisional Court limited this to goods in *præsenti*. The decision is not unimpeachable but it does not touch "carrying on trade or business."

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